

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID M. WILLIAMS,  
Plaintiffs,

V.

14 FEDERAL DEPOSIT INSURANCE  
15 CORPORATION, in its capacity as  
receiver for Washington Mutual Bank.

Defendant.

No. C09-0504 RAJ

**FEDERAL DEPOSIT INSURANCE  
CORPORATION, AS RECEIVER FOR  
WASHINGTON MUTUAL BANK'S,  
ANSWER, DEFENSES AND  
AFFIRMATIVE DEFENSES TO  
COMPLAINT FOR BREACH OF  
CHANGE IN CONTROL AGREEMENT**

Federal Deposit Insurance Corporation, as Receiver for Washington Mutual Bank (the "Receiver"), submits the following answer, defenses and affirmative defenses to Plaintiff David M. Williams' Complaint for Breach of Change in Control Agreement (the "Complaint").

## ANSWER

1. The Receiver is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of ¶ 1 of the Complaint, by on information and belief understands such allegation to be true. Answering the second sentence in ¶ 2 of the Complaint, the Receiver states that, as Receiver for Washington Mutual Bank, it has received

**ANSWER TO COMPLAINT FOR BREACH OF  
CHANGE IN CONTROL AGREEMENT- 1  
No. C09-0504 RAJ**

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1 documents that reflect that David M. Williams was previously an employee of Washington  
2 Mutual and that he entered into a Change in Control Agreement with Washington Mutual. The  
3 Receiver further states that those documents speak for themselves.

4       2. In response to the first sentence in ¶ 2 of the Complaint, the Receiver clarifies  
5 that the named defendant in this case is Federal Deposit Insurance Corporation, in its capacity  
6 as Receiver for Washington Mutual Bank, and on that basis denies the allegations contained in  
7 that sentence. Answering the second sentence in ¶ 2 of the Complaint, the Receiver admits that  
8 on September 25, 2008, it was appointed Receiver for Washington Mutual Bank and has acted  
9 in that capacity since that date. Except as expressly admitted, the Receiver denies the  
10 remaining allegations in ¶ 2 of the Complaint.

11       3. The allegations in ¶ 3 of the Complaint state legal conclusions to which no  
12 answer is required.

13       4. The allegations in ¶ 4 of the Complaint state legal conclusions to which no  
14 answer is required.

15       5. Answering the allegations in ¶ 5 of the Complaint, the Receiver states that, as  
16 Receiver for Washington Mutual Bank, it has received documents that reflect that David M.  
17 Williams entered into a Change in Control Agreement with Washington Mutual. The Receiver  
18 further states that the document referred to in ¶ 5 of the Complaint speaks for itself.

19       6. Answering the allegations in ¶ 6 of the Complaint, the Receiver states that the  
20 document referred to in ¶ 6 of the Complaint speaks for itself.

21       7. Answering the allegations in ¶ 7 of the Complaint, the Receiver admits that on  
22 September 25, 2008, the Office of Thrift Supervision appointed Federal Deposit Insurance  
23 Corporation as Receiver of Washington Mutual Bank and that the Receiver took control of  
24 Washington Mutual Bank on that same day. Except as expressly admitted, the remaining  
25 allegations in ¶ 7 of the Complaint, express or implied, are denied.

1       8. Answering the allegations in ¶ 8 of the Complaint, the Receiver admits that on  
2 September 25, 2008, the Receiver sold certain of the received assets of Washington Mutual  
3 Bank to JPMorgan Chase Bank, N.A. through a Purchase and Assumption Agreement and  
4 states that the Purchase and Assumption Agreement speaks for itself.

5        9. On information and belief, answering the allegations in ¶ 9 of the Complaint, the  
6 Receiver admits that on February 3, 2009, JPMorgan Chase terminated Plaintiff. The Receiver  
7 denies the remaining allegations in ¶ 9 of the Complaint and states that the Change in Control  
8 Agreement referred to in ¶ 9 of the Complaint speaks for itself.

9       10. Answering the allegations in ¶ 10 of the Complaint, the Receiver states that, as  
10 Receiver for Washington Mutual Bank, it received a claim from David M. Williams and further  
11 states that the documents referred to in ¶ 10 of the Complaint speak for themselves. Except as  
12 expressly admitted, the remaining allegations in ¶ 10 of the Complaint are denied.

13        11. The Receiver admits that on February 26, 2009, it sent a Notice of Disallowance  
14 of Claim letter to Plaintiff and states that letter speaks for itself.

15 | 12. The Receiver denies the allegations in ¶ 12 of the Complaint.

16           13. Paragraph 13 of the Complaint contains allegations to which no answer is  
17 required.

18           14. Paragraph 14 of the Complaint states legal conclusions to which no answer is  
19 required.

20 | 15. The Receiver denies the allegations in ¶ 15 of the Complaint.

## Prayer for Relief

Plaintiff's Prayer for Relief contains allegations to which no answer is required. To the extent Plaintiff's Prayer for Relief requires an answer, the Receiver denies all of the allegations contained therein and states that Plaintiff is not entitled to any of the relief sought through this lawsuit.

1                   **DEFENSES AND AFFIRMATIVE DEFENSES**

2                   The Receiver asserts the following defenses and affirmative defenses:

- 3                 1. Plaintiff fails to state a claim upon which relief can be granted.
- 4                 2. Plaintiffs' claims fail, in whole or in part, pursuant to 12 C.F.R. § 563.39.
- 5                 3. Plaintiffs' claims fail, in whole or in part, pursuant to 12 C.F.R. § 359.
- 6                 4. Plaintiff's claims fail, in whole or in part, pursuant to 12 U.S.C. § 1821(e).
- 7                 5. Plaintiff's claims fail, in whole or in part, pursuant to 12 U.S.C. § 1828(k).
- 8                 6. Plaintiff's claims fail, in whole or in part, pursuant to 12 U.S.C. § 1821(j).
- 9                 7. Plaintiff's claims fail, in whole or in part, pursuant to 12 U.S.C. § 1825(b)(3).
- 10                8. Plaintiff's alleged damages, if any, were caused solely or in part by Plaintiff's  
11 own negligence and/or failure to take reasonable steps to protect his own interests and/or was  
12 caused by the acts or omissions of others over whom the Receiver has no control.

13                9. Plaintiff has released the Receiver from the claims he pursues through this  
14 lawsuit.

15                10. Plaintiff's claims, if any, are time-barred or otherwise untimely.  
16                11. Plaintiff's claims, if any, were discharged by the failure of Washington Mutual  
17 Bank.

- 18                12. Plaintiff's claims, if any, fail pursuant to the assumption of risk doctrine.
- 19                13. Plaintiff's claims are barred by the doctrine of waiver.
- 20                14. Plaintiff's claims are barred by the doctrine of unclean hands.
- 21                15. Plaintiff failed to mitigate his damages, if any.

22                The above defenses and affirmative defenses are based on the facts and information  
23 currently known to the Receiver. The Receiver reserves the right to amend or add defenses or  
24 affirmative defenses based on information, facts later discovered, pled, or offered, or any other  
25 development in the investigation of Plaintiff's claims.

## **REQUEST FOR RELIEF**

Having set forth its answer, defenses and affirmative defenses, the Receiver respectfully requests that the Court grant the following relief:

- A. Dismissal of this lawsuit with prejudice;
  - B. An award of attorneys' fees and costs incurred in defending this lawsuit as permissible by law; and
  - C. Such other relief as the Court deems just and proper.

Dated this 16th day of July, 2009.

DLA PIPER LLP (US)

/s/ Russell B. Wuehler

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Corporation as Receiver for Washington

## **CERTIFICATE OF SERVICE**

I hereby certify that on July 16, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the parties.

Dated this 16th day of July, 2009.

/s/ *Russell B. Wuehler*

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